

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

DOUGLAS JOSEPH CHYATTE,

Plaintiff,

vs.

MISSOULA COUNTY, CITY OF  
MISSOULA, MISSOULA COUNTY  
SHERIFF'S DEPARTMENT, SHERIFF  
CARL IBSEN, MISSOULA COUNTY  
DETENTION FACILITY, CHIEF  
DETENTION OFFICER FOSS, CAPTAIN  
KOWALSKI, JAIL MANAGER HARRIS,  
SGT. STEWART, SGT. RONEY, DOII  
TACKETT, SPECTRUM MEDICAL  
(BENEFIS HEALTH SYS.), NURSE TIM  
STAHL, and JON DOES 1-20,

Defendants

CV 13-174-M-DWM-JCL

ORDER AND FINDINGS AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE

Plaintiff Douglas Chyatte alleges Defendants violated his rights under the Americans with Disabilities Act (ADA), the United States Constitution, and the Montana Constitution while he was incarcerated at the Missoula County Detention Facility (MCDF). (Complaint, Doc. 2). After conducting the prescreening process mandated by 28 U.S. C. § 1915, the Court issued an Order giving Chyatte an opportunity to file an amended complaint.

The Court has now considered whether the Amended Complaint is frivolous,

malicious, fails to state a claim, or seeks solely monetary relief from a defendant who is immune. *See* 28 U.S.C. §§ 1915(e)(2), 1915A(b). It has also considered whether Chyatte has a reasonable opportunity to prevail on the merits. *See* 42 U.S.C. § 1997e(g)(2) (while defendants may occasionally be permitted to “waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983,” once the Court has conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a preliminary determination based on the face of the pleading alone that plaintiff has a “reasonable opportunity to prevail on the merits,” defendants are required to respond).

With liberal construction the Court finds that Chyatte’s allegations in his Amended Complaint warrant a response from Defendants Missoula County, Harris, Tackett, Jensen, Kowalski, Stewart, Wilson, Muller, Ellingson, Atkins, Spectrum Medical, Stahl, Trudeau, and Munsell.

The following Defendants not named in the Amended Complaint will be recommended for dismissal for the reasons set forth in the Court’s Order of January 28, 2014: the City of Missoula, the Missoula County Sheriff’s Department, Sheriff Carl Ibsen, Missoula County Detention Facility, Chief Detention Officer Foss, Sgt. Roney, and Jon Does 1-20. In addition, Chyatte’s

Equal Protection, Fourth Amendment, and Eighth Amendment claims listed in his original complaint were not addressed in his Amended Complaint and therefore should be dismissed for the reasons set forth in the Court's January 28, 2014 Order.

Based on the foregoing, the Court issues the following:

### **ORDER**

1. Pursuant to Fed.R.Civ.P. 4(d), the Court requests Defendants Missoula County, Harris, Tackett, Jensen, Kowalski, Stewart, Wilson, Muller, Ellingson, Atkins, Spectrum Medical, Stahl, Trudeau, and Munsell to waive service of summons by executing, or having counsel execute, the Waiver of Service of Summons. The Waiver must be returned to the Court within thirty (30) days of the entry date reflected on the Notice of Electronic Filing. If Defendants choose to return the Waiver of Service of Summons, the answer or an appropriate motion will be due within 60 days after the entry date reflected on the Notice of Electronic Filing for this Order, pursuant to Fed.R.Civ.P. 12(a)(1)(A)(ii).

2. The Clerk of Court shall forward a copy of the Amended Complaint, this Order, a Notice of Lawsuit and Request to Waive Service of Summons, and a Waiver of Service of Summons to:

Missoula County Attorney  
200 West Broadway  
Missoula, MT 59802

Jail Manager Harris, DOII Tackett, Detention  
Officer Jensen, Captain Kowalski, Sgt. Stewart, Sgt  
Wilson, Sgt. Muller, Detention Officer Ellingson,  
Detention Officer Atkins, Spectrum Medical, Tim  
Stahl, Pa-C Trudeau, and FNP Munsell  
2340 Mullan Road  
Missoula, MT 59808

Counsel for Defendants must file a “Notice of Appearance” as a separate document at the time an Answer or Rule 12 motion is filed. *See* D. Mont. L.R. 12.2.

3. Any party’s request that the Court grant relief, make a ruling, or take an action of any kind must be made in the form of a motion, with an appropriate caption designating the name of the motion, served on all parties to the litigation, pursuant to Federal Rules of Civil Procedure 7, 10, and 11. If a party wishes to give the Court information, such information must be presented in the form of a notice. The Court will not consider requests made or information presented in letter form.

4. Pursuant to Fed.R.Civ.P. 5(a), all documents presented for the Court’s consideration must be simultaneously served by first-class mail upon the opposing party or their counsel if the party is represented. Each party shall sign and attach a proper certificate of service to each document filed with the Court. The Certificate of Service must state the date on which the document was deposited in the mail and

the name and address of the person to whom the document was sent. The sender must sign the certificate of service.

5. Chyatte shall not make any motion for default until at least seventy (70) days after the date of this Order.

6. At all times during the pendency of this action, Chyatte shall immediately advise the Court and opposing counsel of any change of address and its effective date. Failure to file a notice of change of address may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

Further the Court makes the following:

### **RECOMMENDATIONS**

The City of Missoula, the Missoula County Sheriff's Department, Sheriff Carl Ibsen, Missoula County Detention Facility, Chief Detention Officer Foss, Sgt. Roney, and Jon Does 1-20 and Chyatte's Equal Protection, Fourth Amendment, and Eighth Amendment claims listed as in his original complaint were should be dismissed.

### **NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Chyatte may file objections to these Findings and Recommendations

within fourteen (14) days after service (mailing) hereof.<sup>1</sup> 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 22nd day of August, 2014.

/s/ Jeremiah C. Lynch  
Jeremiah C. Lynch  
United States Magistrate Judge

---

<sup>1</sup>As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.

**NOTICE OF LAWSUIT AND REQUEST FOR  
WAIVER OF SERVICE OF SUMMONS**

TO:

Missoula County Attorney  
200 West Broadway  
Missoula, MT 59802

Jail Manager Harris, DOI Tackett, Detention  
Officer Jensen, Captain Kowalski, Sgt. Stewart, Sgt  
Wilson, Sgt. Muller, Detention Officer Ellingson,  
Detention Officer Atkins, Spectrum Medical, Tim  
Stahl, Pa-C Trudeau, and FNP Munsell  
2340 Mullan Road  
Missoula, MT 59808

A lawsuit has been commenced by a pro se plaintiff against Missoula County, Jail Manager Harris, DOI Tackett, Detention Officer Jensen, Captain Kowalski, Sgt. Stewart, Sgt Wilson, Sgt. Muller, Detention Officer Ellingson, Detention Officer Atkins, Spectrum Medical, Tim Stahl, Pa-C Trudeau, and FNP Munsell. A copy the Amended Complaint is attached to this notice. It has been filed in the United States District Court for the District of Montana, Civil Action No. CV-13-174-M-DWM-JCL. The Court has completed its pre-screening and concludes these Defendants must file a responsive pleading. *See* 42 U.S.C. § 1997e(c), (g)(2); 28 U.S.C. §§ 1915(e)(2), 1915A(a), (b).

This is not a formal summons or notification from the Court, but rather a request that you sign and file the enclosed waiver of service in order to save the cost of service by the U.S. Marshal's Service. The cost of service will be avoided if you file the signed Waiver of Service of Summons within 30 days after the entry date reflected on the Notice of Electronic Filing of the "Order to Serve Complaint by Requesting Waiver of Service of Summons," served with this Notice.

If you comply with this request and timely file the waiver, no summons will be served. The action will then proceed as if you had been served on the date the waiver is filed, except you must file an answer or appropriate motion before 60 days from the date the Order directing this Notice of Lawsuit and Request for Waiver of Service of Summons to be sent was entered as indicated on the Notice of Electronic Filing.

If you do not wish to waive service, please indicate this on the Waiver of Service of Summons form. The Court will, in turn, order the U.S. Marshal's Service to serve the complaint personally on you and may impose the full costs of such service.

/s/ Jeremiah C. Lynch  
Jeremiah C. Lynch  
United States Magistrate Judge

**WAIVER OF SERVICE OF SUMMONS**

TO: The U.S. District Court for the District of Montana

The following Defendants acknowledge receipt of your request that they waive service of summons in the following action: Chyatte v. Missoula County, et al., Civil Action No. CV-13-174--M-DWM-JCL filed in the United States District Court for the District of Montana. Defendants also received a copy of the Amended Complaint. Defendants agree to save the cost of service of a summons and an additional copy of the complaint in this action by not requiring that the following individuals be served with judicial process in the case provided by Fed.R.Civ.P. 4:

\_\_\_\_\_; \_\_\_\_\_;

\_\_\_\_\_; \_\_\_\_\_;

\_\_\_\_\_; \_\_\_\_\_;

\_\_\_\_\_; \_\_\_\_\_;

The above-named defendant retains all defenses or objections to the lawsuits or to the jurisdiction or venue of the Court except for objections based on a defect in the summons or in the service of the summons. We understand judgments may be entered against the above-named defendant if an answer or motion under Fed.R.Civ.P. 12 is not served within 60 days after the date the Order directing the Notice of Lawsuit and Request for Waiver of Service of Summons to be sent was entered as indicated on the Notice of Electronic Filing.

The following defendant declines to waive service.

\_\_\_\_\_; \_\_\_\_\_;

\_\_\_\_\_; \_\_\_\_\_;

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED/TYPED NAME

\_\_\_\_\_  
ADDRESS